

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA  
6 RENO, NEVADA

7 HOWARD ELLIS, ) 3:08-cv-00657-ECR-WGC  
8 )  
9 Plaintiff, ) Order  
10 vs. )  
11 JAMES BENEDETTI, et al., )  
12 Defendants. )  
13

14 I. Background

15 On May 9, 2011, the Magistrate Judge issued an Order (#41)  
16 denying Plaintiff's Motion for Appointment of Counsel (#39). On May  
17 18, 2011, Plaintiff filed a Motion for Reconsideration (#44).  
18 Defendants filed their Opposition (#47) on June 2, 2011, and  
19 Plaintiff replied (#51) on June 10, 2011.

20 On October 20, 2011, the Magistrate Judge issued an Order (#98)  
21 denying Plaintiff's third Motion for Appointment of Counsel (#95).  
22 Plaintiff filed an objection (#100) on October 31, 2011.

23 On November 18, 2011, the Magistrate Judge issued an Order  
24 (#110) ruling on various motions, including granting Plaintiff's  
25 Motion for Enlargement of Time (#106) and ordering discovery on  
26 Defendant's Motion to Dismiss in Part (#101) to be completed on or  
27 before February 17, 2012. Plaintiff filed an objection (#115) on  
28

1 December 5, 2011, in spite of the Magistrate Judge ruling in his  
2 favor, and arguing that the Magistrate Judge should recuse himself.

## 3 4 II. Discussion

5 Because Plaintiff contends that the Magistrate Judge lacked  
6 jurisdiction to decide the previous Motions for Appointment of  
7 Counsel (##39, 100), the Court will treat Plaintiff's Motion for  
8 Reconsideration (#44) and Objection (#100) as appeals of the  
9 Magistrate Judge's Orders (##41, 98) pursuant to 28 U.S.C. § 636(b),  
10 Federal Rule of Civil Procedure 72, and Local Rule IB 3-19(a).

11 Title 28 U.S.C. § 636(b)(1)(A) provides that a district judge  
12 "may reconsider any pretrial matter . . . where it has been shown  
13 that the magistrate judge's order is clearly erroneous or contrary  
14 to law." Federal Rule of Civil Procedure 72(a) likewise provides  
15 that the "district judge in the case must consider timely objections  
16 and modify or set aside any part of the order that is clearly  
17 erroneous or is contrary to law." Plaintiff contends that the  
18 Magistrate Judge lacked jurisdiction in the matter because Plaintiff  
19 did not consent to the Magistrate Judge deciding his Motion for  
20 Appointment of Counsel (#39). However, the parties' consent is not  
21 required for a magistrate judge to decide nondispositive pretrial  
22 matters. See FED. R. CIV. P. 72(a); see also 28 U.S.C. §  
23 636(b)(1)(A) ("A judge may designate a magistrate judge to hear and  
24 determine any pretrial matter pending before the court."). When  
25 acting on a pretrial matter under section 636(b)(1)(A), the  
26 magistrate judge is permitted to hear and determine any pretrial  
27 matter nondispositive of a claim or defense pending before the court

1 except for eight specifically listed motions. Plaintiff's Motion  
2 for Appointment of Counsel (#39) is not one of those specifically  
3 listed motions. For this reason, the Magistrate Judge had  
4 jurisdiction to decide Plaintiff's Motions for Appointment of  
5 Counsel (##39, 95) notwithstanding Plaintiff's lack of consent.

6 With regard to the Order (#110) wherein the Magistrate Judge  
7 granted Plaintiff's Motion for Enlargement of Time (#106), Plaintiff  
8 has presented no valid reason for the Magistrate Judge to recuse  
9 himself nor has he presented any reason for this Court to overrule  
10 any aspect of the ruling.

11  
12 **IT IS, THEREFORE, HEREBY ORDERED** that the Magistrate Judge's  
13 Orders (##41, 98, 110) are **AFFIRMED** and Plaintiff's Motions (##44,  
14 100, 115) are **DENIED**.

15  
16  
17 DATED: January 5, 2012.

18   
19 UNITED STATES DISTRICT JUDGE  
20  
21  
22  
23  
24  
25  
26  
27  
28